

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Brian Whitaker

Plaintiff,

v.

**Grosvenor Airport Associates,
LLC**, a California Limited Liability
Company; and Does 1-10,

Defendants,

Case No.

**Complaint For Damages And
Injunctive Relief For
Violations Of:** Americans With
Disabilities Act; Unruh Civil
Rights Act

Plaintiff Brian Whitaker complains of Grosvenor Airport Associates LLC, and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. Defendant Grosvenor Airport Associates LLC owns and operates the Best Western Plus Hotel located at 380 South Airport Blvd., South San

1 Francisco, California, currently and at all times relevant to this complaint.

2 3. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their
4 relative responsibilities in causing the access violations herein complained of,
5 and alleges a joint venture and common enterprise by all such Defendants.
6 Plaintiff is informed and believes that each of the Defendants herein,
7 including Does 1 through 10, inclusive, is responsible in some capacity for the
8 events herein alleged, or is a necessary party for obtaining appropriate relief.
9 Plaintiff will seek leave to amend when the true names, capacities,
10 connections, and responsibilities of the Defendants and Does 1 through 10,
11 inclusive, are ascertained.

12
13 **JURISDICTION:**

14 4. The Court has subject matter jurisdiction over the action pursuant to 28
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 5. Pursuant to supplemental jurisdiction, an attendant and related cause
18 of action, arising from the same nucleus of operative facts and arising out of
19 the same transactions, is also brought under California's Unruh Civil Rights
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
22 founded on the fact that the real property which is the subject of this action is
23 located in this district and that Plaintiff's cause of action arose in this district.

24
25 **PRELIMINARY STATEMENT**

26 7. This is a lawsuit challenging the reservation policies and practices of a
27 place of lodging. Plaintiff does not know if any physical or architectural
28 barriers exist at the hotel and, therefore, is not claiming that that the hotel has

1 violated any construction-related accessibility standard. Instead, this is about
2 the lack of information provided on the hotel's reservation website that would
3 permit plaintiff to determine if there are rooms that would work for him.

4 8. After decades of research and findings, Congress found that there was
5 a "serious and pervasive social problem" in America: the "discriminatory
6 effects" of communication barriers to persons with disability. The data was
7 clear and embarrassing. Persons with disabilities were unable to "fully
8 participate in all aspects of society," occupying "an inferior status in our
9 society," often for no other reason than businesses, including hotels and
10 motels, failed to provide information to disabled travelers. Thus, Congress
11 decided "to invoke the sweep of congressional authority" and issue a "national
12 mandate for the elimination of discrimination against individuals with
13 disabilities," and to finally ensure that persons with disabilities have "equality
14 of opportunity, full participation, independent living" and self-sufficiency.

15 9. As part of that effort, Congress passed detailed and comprehensive
16 regulations about the design of hotels and motels. But, as importantly,
17 Congress recognized that the physical accessibility of a hotel or motel means
18 little if the 61 million adults living in America with disabilities are unable to
19 determine which hotels/motels are accessible and to reserve them. Thus,
20 there is a legal mandate to provide a certain level of information to disabled
21 travelers.

22 10. But despite the rules and regulations regarding reservation procedures,
23 a 2019 industry article noted that: "the hospitality sector has largely
24 overlooked the importance of promoting accessible features to travelers."

25 11. These issues are of paramount important. Persons with severe
26 disabilities have modified their own residences to accommodate their unique
27 needs and to ameliorate their physical limitations. But persons with disabilities
28 are never more vulnerable than when leaving their own residences and having

1 to travel and stay at unknown places of lodging. They must be able to ascertain
2 whether those places work for them.

3
4 **FACTUAL ALLEGATIONS:**

5 12. Plaintiff planned on making a trip in September of 2020 to the San
6 Francisco, California, area.

7 13. He chose the Best Western Plus Hotel located at 380 South Airport
8 Blvd., South San Francisco, California, because this hotel was at a desirable
9 price and location.

10 14. Plaintiff needs an accessible guestroom. He needs clearance around
11 beds, he needs accessible restroom facilities including accessible sinks,
12 accessible tubs or showers and accessible toilets. He needs sufficient
13 maneuvering clearance in and around the guestroom. He needs accessories to
14 be located within an accessible reach range. In short, he benefits from and
15 needs compliant accessible guestroom features.

16 15. Plaintiff went to the Best Western reservation website at
17 [https://www.bestwestern.com/en_US/book/hotels-in-south-san-](https://www.bestwestern.com/en_US/book/hotels-in-south-san-francisco/best-western-plus-grosvenor-airport-hotel/propertyCode.05297.html)
18 [francisco/best-western-plus-grosvenor-airport-](https://www.bestwestern.com/en_US/book/hotels-in-south-san-francisco/best-western-plus-grosvenor-airport-hotel/propertyCode.05297.html)
19 [hotel/propertyCode.05297.html](https://www.bestwestern.com/en_US/book/hotels-in-south-san-francisco/best-western-plus-grosvenor-airport-hotel/propertyCode.05297.html) seeking to book an accessible room at the
20 San Francisco location on September 12, 2020.

21 16. Plaintiff found that there was little information about the accessibility
22 of the rooms. For example, under the Amenities tab, the Website stated only
23 conclusions, such as “Accessible bathrooms and features, including
24 shower/tub”, “Interior routes to public spaces that do not have abrupt level
25 changes”, and “Accessible clear floor space”. When one clicks on the
26 accessible rooms, more vague and conclusory statements are used to describe
27 the room. For example, the accessible rooms with the king bed and the two
28 double beds says: “Roll In Shower, Mobility Accessible.” There are no other

1 details. These vague and conclusory statements do not allow Plaintiff to
 2 independently verify if the rooms are in fact, accessible. For example, there is
 3 no mention if the sinks are accessible, or if the toilets have the proper clearance
 4 around them. There is no mention if the desks in the rooms or the maneuvering
 5 clearances in the rooms are accessible.

6 17. The defendant's reservation system failed to identify and describe the
 7 accessible features in the guestroom chosen by the plaintiff in enough detail to
 8 reasonably permit him to assess independently whether the particular
 9 guestroom met his accessibility needs.

10 18. This lack of information created difficulty for the plaintiff and the idea
 11 of trying to book this room -- essentially ignorant about its accessibility --
 12 caused discomfort for the Plaintiff.

13 19. Plaintiff would like to patronize this hotel but is deterred from doing so
 14 because of the lack of detailed information through the hotel's reservation
 15 system. Plaintiff not only travels frequently but is always on the lookout for
 16 businesses that violate the law and discriminate against him and other persons
 17 with disabilities, intending to have them comply with the law and pay statutory
 18 penalties.

19
 20 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**

21 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 22 Defendants.) (42 U.S.C. section 12101, et seq.)

23 20. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 24 again herein, the allegations contained in all prior paragraphs of this
 25 complaint.

26 21. Under the ADA, it is an act of discrimination to fail to make reasonable
 27 modifications in policies, practices, or procedures when such modifications
 28 are necessary to afford goods, services, facilities, privileges advantages or

1 accommodations to person with disabilities unless the entity can demonstrate
 2 that taking such steps would fundamentally alter the nature of the those goods,
 3 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §
 4 12182(B)(2)(A)(ii).

5 22. Specifically, with respect to reservations by places of lodging, a
 6 defendant must ensure that its reservation system, including reservations
 7 made by “any means,” including by third parties, shall:

- 8 a. Ensure that individuals with disabilities can make
 9 reservations for accessible guest rooms during the same
 10 hours and in the same manner as individuals who do not
 11 need accessible rooms;
- 12 b. Identify and describe accessible features in the hotels and
 13 guest rooms offered through its reservations service in
 14 enough detail to reasonably permit individuals with
 15 disabilities to assess independently whether a given hotel
 16 or guest room meets his or her accessibility needs; and
- 17 c. Reserve, upon request, accessible guest rooms or specific
 18 types of guest rooms and ensure that the guest rooms
 19 requested are blocked and removed from all reservations
 20 systems.

21 *See* 28 C.F.R. § 36.302(e).

22 23. Here, the defendant failed to modify its reservation policies and
 23 procedures to ensure that it identified and described accessible features in the
 24 hotels and guest rooms in enough detail to reasonably permit individuals with
 25 disabilities to assess independently whether a given hotel or guest room meets
 26 his or her accessibility needs and failed to ensure that individuals with
 27 disabilities can make reservations for accessible guest rooms during the same
 28 hours and in the same manner as individuals who do not need accessible

rooms.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

24. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

25. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

26. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, failing to comply with the ADA with respect to its reservation policies and practices.

27. Because the violation of the Unruh Civil Rights Act resulted in difficulty and discomfort for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

1 2. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 for each offense.

3 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

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6 Dated: September 17, 2020

CENTER FOR DISABILITY ACCESS

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10 By: _____

11 Russell Handy, Esq.

12 Attorneys for Plaintiff
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